



PATENT  
Customer No. 22,852  
Attorney Docket No. 08048.0048-000

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Jean-Louis H. GUERET ) Group Art Unit: 3751  
Application No.: 10/810,821 ) Examiner: Huyen D. Le  
Filed: March 29, 2004 ) Confirmation No.: 1007  
For: COSMETIC APPLICATOR )

### **MAIL STOP AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

### **RESPONSE TO OFFICE ACTION**

In reply to the Office Action dated December 4, 2006, Applicant respectfully requests that the Patent Office reconsider the present application and withdraw all of the claim rejections for the reasons explained below.

Claims 1-80 are pending in this application, with claims 1 and 42 being independent. Of those pending claims, claims 4-6, 12-14, 16, 18, 20, 25, 35, 44-46, 52-54, 56, 58, 60, and 65 have been withdrawn from consideration as being allegedly drawn to a non-elected species.

### **35 U.S.C. § 102(b) Rejections**

In the Office Action, claims 1-3, 7-9, 15, 17, 22-24, 26, 39, 42, 43, 47-49, 55, 57, 62-64, 66, and 78 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,195,546 to Cansler et al. ("Cansler '546"). Also, claims 1-3, 7-9, 15, 17,

22, 23, 26-28, 37, 39, 41-43, 47-49, 55, 57, 62, 63, 66-68, 76, 78, and 80 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,161,555 to Cansler et al. (“Cansler ‘555”). Applicant respectfully traverses these rejections.

Each of independent claims 1 and 42 is directed to an applicator for applying a cosmetic product. Claim 1 recites an applicator including, among other things, “at least two applicator elements, wherein each … comprises at least one periodic pattern, … and wherein at least two periodic patterns of the applicator elements are different from one another.” Similarly, claim 42 recites an applicator including, among other things, “at least two bristles, wherein each … comprises at least one periodic pattern, [and] wherein at least two periodic patterns of the bristles are different from one another.” As explained below, Cansler ‘546 and Cansler ‘555 do not teach, or otherwise suggest, the subject matter of claims 1 and 42.

**Cansler ‘546**

Cansler ‘546 discloses a cosmetic brush 10 for applying make-up powder. The brush 10 includes bristles 14 having a wavy configuration, as shown in Figs. 4A, 4B, and 4C. The Office Action alleged that each of the bristles 14 of Cansler ‘546 comprises at least one periodic pattern.

Applicant respectfully disagrees with the Office Action’s apparent characterization of Cansler ‘546. For example, Cansler ‘546 expressly teaches that the waves of bristles 14 are irregular and random in both frequency and amplitude along the lengths of the bristles to have a fuller or fluffier brush. That is, Cansler ‘546 expressly teaches that its bristles 14 have no periodic pattern along their lengths. As clearly set forth in the present specification (i.e., at page 3, paragraph [013]), the term “periodic pattern” is defined as designating “a portion of an applicator element (e.g., a portion of a

bristle), where the portion is substantially reproduced in a periodic manner along the applicator element.” As is abundantly clear, none of the bristles 14 of Cansler '546 has a portion that is substantially reproduced in a periodic manner along its length. For at least this reason, independent claims 1 and 42, and their respective dependent claims, patentably distinguish from Cansler '546.

**Cansler '555**

Cansler '555 disclose a mascara brush 110 having waved bristles 112 extending radially outwardly from an axial core of twisted wires 114. The bristles 112 extend outwardly in a random pattern from the twisted wires 114 and result in a generally uniform distribution of the bristle ends. As is abundantly clear, however, Cansler '555 does not teach that at least two periodic patterns are different from one another, as recited in claims 1 and 42. Instead, Cansler '555 teaches that all of the bristles 112 have the same pattern.

Nevertheless, the Office Action alleged that “at least two periodic patterns of the applicator elements are different from one another (when the wavy configuration is non-uniform).” Applicant respectfully submits that this allegation is erroneous because, among other reasons, bristles having non-uniform waves do not have a “periodic pattern,” as defined in the specification. As discussed above, the term “periodic pattern” is defined in the specification as designating a portion of a bristle (or a portion of another applicator element), where the portion is substantially reproduced in a periodic manner along the bristle (or other application element). If the waves imparted to the bristles 112 are non-uniform, the waves cannot form any “periodic pattern” that is substantially reproduced in a periodic manner. For at least these reasons, independent

claims 1 and 42, and their respective dependent claims, patentably distinguish from Cansler '555.

For the reasons set forth above, Applicant respectfully submits that Cansler '546 and Cansler '555 do not anticipate the subject matter of claims 1 and 42. Thus, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejections based on Cansler '546 and Cansler '555.

**35 U.S.C. § 103(a) Rejections**

Claims 10, 11, 19, 21, 27, 29-32, 36, 37, 40, 41, 50, 51, 59, 61, 67, 69-72, 75, 76, 79, and 80 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cansler '546 alone or in combination with European Application Publication No. 0651955 ("EP '955"). In addition, claims 10, 11, 19, 21, 24, 29-34, 36, 38<sup>1</sup>, 40, 50, 51, 59, 61, 64, 69-75, 77, and 79 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cansler '555 alone or in combination with EP '955, U.S. Patent No. 6,295,994 to Thayer et al., or U.S. Patent No. 4,403,624 to Montgomery ("Montgomery").

Applicant notes that these rejected claims depend, either directly or indirectly, from independent claim 1 or 42. As discussed above, independent claims 1 and 42 patentably distinguish from Cansler '546 and Cansler '555. Also, none of the cited secondary references supplies the deficiencies of Cansler '546 and Cansler '555. Therefore, these dependent claims should also patentably distinguish from the cited references at least by virtue of their respective dependencies from independent claims 1

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<sup>1</sup> In paragraph 20, the Office Action rejects claim 39, along with claim 77, under 35 U.S.C. § 103(a). Since that rejection discusses the subject matter of claim 39, rather than claim 38, Applicant assumes that the Office Action intended to reject claim 38, rather than claim 39. If Applicant's assumption is incorrect, Applicant respectfully requests that the Office clarify this matter in its next official communication to Applicant.

and 42. Thus, Applicant respectfully requests reconsideration and withdrawal of these 35 U.S.C. § 103(a) rejections.

**Conclusions**

In view of the foregoing reasons, Applicant respectfully requests reconsideration of this application, withdrawal of all of the outstanding rejections, and timely allowance of all pending claims.

The Office Action contains a number of statements and characterizations regarding the claims and the related art. Applicant declines to subscribe automatically to any statement or characterization in the Office Action, regardless of whether it is addressed above.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: March 5, 2007

By: Anthony M. Gutowski (Reg. No. 50,585)  
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